IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9339 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALSINHFATABHAIKISHORI - Applicant(s)

Versus

STATEOFGUJARAT & 1 - Respondent(s)

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Appearance :

MR MA KHARADI for Applicant(s) : 1,
MR HL JANI for Respondent(s) : 1,
MR MTM HAKIM for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 17/10/2005

ORAL JUDGMENT

1.Rule. Mr. H.L. Jani, learned Assistant Public Prosecutor waives service of rule on behalf of the respondent no.1-State and Mr. K.M. Mansuri, learned

advocate appearing for Mr. M.T.M Hakim for the respondent no.2 waives service of rule for respondent no.2.

2.The petitioner/original accused has filed this petition under Section 482 of the Criminal Procedure Code praying for quashing and setting aside the FIR being Crime Register No. I-89/2004, lodged with the Dahod town Police Station and also praying for quashing and setting aside the process issued thereupon.

3.This court has issued the notice on 17.08.2005 and observed that the full payment has been made and the certificate was issued, copy whereof was produced at Annexure III to the petition. The court, thereafter passed further order on 26.08.2005 wherein also it is observed, after hearing Mr. F.M. Bhagor, Assistant Inspector of Panchmahal District Co-operative Bank, Dahod that under one-time settlement scheme, the amount has been fully paid and nothing remains outstanding. The court has therefore stayed the further investigation of the complaint.

4.Pursuant to the notice issued by this court, Mr. M.T.M Hakim has filed his appearance on behalf of the respondent no.2 - Bank and an affidavit-in-reply has also

been filed on 01.10.2005. In the said affidavit-in-reply, it is stated that the Cooperative Society had taken loan of Rs.1,82,000/- on 11.12.1986 from the bank. For the same, necessary documents were also executed. Thereafter, in the year 1988 an amount of Rs.1,66,000/- was deposited by the Cooperative Society. Thereafter, the Cooperative Society did not deposit any amount towards the said amount. Thereafter, the complaint was filed with Dahod town Police Station which came to be registered as C.R.No. I-89/2004. Thereafter, the Cooperative Society on 30.07.2004 proposed one time settlement scheme. The said settlement of the Cooperative Society came to be sanctioned by the Head Office of the Bank on 26.08.2004 on condition that the Cooperative Society deposits Rs. 3 lakhs within a period of one year. Subsequently, the Cooperative Society deposited the entire amount as per one time settlement scheme on 26.07.2005 and the interest thereon making payment of Rs. 3,06,489/-. Necessary receipts to this effect are annexed alongwith the affidavit-in-reply. It is further stated in the affidavit-in-reply that since the Cooperative Society has deposited the entire amount and no further due is outstanding, the bank does not propose to prosecute and continue the said proceedings.

5.After having heard Mr. R.I Mansuri, learned advocate appearing for Mr. M.A. Kharadi appearing on behalf of the petitioner and Mr. K.M. Mansuri, learned advocate appearing for Mr. M.T.M Hakim appearing for the respondent no.2 and after having gone through the complaint, present petition as well as the affidavit-in-reply and the documents attached, the court is of the view that the amount has already been paid by the petitioner to the complainant bank. Since nothing remains outstanding, the bank has clearly stated in the affidavit-in-reply that the bank does not wish to prosecute the complaint any further. So there is no need to direct the parties to face criminal trial. There is settled law that if the dispute is amicably resolved and the settlement is arrived at, the parties may not be compelled to undergo the criminal trial. The court is of the view that this is fit case where the court has to exercise its inherent powers under Section 482 of the Code of Criminal Procedure. Criminal Case No I-89/2004 which is pending before the trial court is therefore quashed and set aside. The petition is accordingly allowed.

6.Rule made absolute to the above extent. No order as to costs. Direct Service permitted.

(K.A. PUJ, J.)

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